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01IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 08.07.2019

Coram

The Hon'ble Mr. Justice M.M.SUNDRESH
and
The Hon'ble Mr. Justice M. NIRMAL KUMAR

H.C.P. No.788 of 2019

Mahalakshmi ... Petitioner/Wife of the detenu

-vs-.

1.State of Tamil Nadu
Rep. By its Secretary,
Prohibition and Excise Department,
Fort St.George, Chennai - 600 009

2.District Collector and District Magistrate,
Kancheepuram District,
Kancheepuram.

... Respondents

Petition filed under Article 226 of the Constitution of India, to issue a Writ of Habeas Corpus calling for the records leading to the detention of the petitioner's husband Vinoth Kumar @ Quick Vinoth, Son of Pownraj, male aged about 39 years is presently lodged in Central Prison, Puzhal at Chennai and has been detained under Act 14/82 as a "Goonda" vide detention order dated 04.04.2019 on the file of the 2nd respondent herein, made in Memo No.26/BCDFGISSSV/2019 and quash the same and consequently direct the respondents herein to produce the body of the person of the said detenu before this Court and thereafter set him at liberty from the Central Prison, Puzhal, Chennai.

For Petitioner : Mr.Rajavelu

For Respondents : Mr.C.Iyyappa Raj
Addl.Public Prosecutor



ORDER

[Order of the Court was made by M.M.SUNDRESH, J.]

The petitioner is the wife of the detenu, Vinoth Kumar @ Quick Vinoth, Son of Pownraj, male aged about 39 years. The detenu has been detained by the second respondent by his order in Memo No.26/BCDFGISSSV/2019, dated 04.04.2019 holding to be a "Goonda", as contemplated under Section 2(f) of Tamil Nadu Act 14 of 1982. The said order is under challenge in this Habeas Corpus Petition.

2. We have heard the learned counsel appearing for the petitioner and the learned Additional Public Prosecutor appearing for the respondents. We have also perused the records produced by the Detaining Authority.

3.The main argument of the learned counsel appearing for the petitioner is that the case relied on by the detaining authority is not similar in nature and the offence in the ground case is totally different. Therefore, the likelihood of the detenu coming out on bail is not there and the subjective satisfaction arrived by the detaining authority is not proper.

4.For appreciating the contentions raised by the learned counsel for the petitioner, the relevant averments in para 5 of the grounds of detention are extracted below:

"5. I am aware that Thiru. Vinothkumar @ Quick Vinoth S/o. Pownraj was arrested in Chengalpattu Taluk PS Ce.No.108/2019 on 09.03.2019 produced before the Judicial Magistrate-II, Chengalpattu ordered to be remanded under Judicial Custody upto 22.03.2019 and lodged at District Jail, Chengalpattu, as a remanded prisoner. His remand period was further extended upto 05.04.2019. He has filed a bail application in above case before the Principal District and Sessions Court, Chengalpattu in CrI.M.P.No.1350/2019 and the same was dismissed on 19.03.2019. Then he had filed another bail petition before High Court, Madras on 21.03.2019 in CrI.O.P.No.8092/2019 and the same was pending before the Court. If he is released on bail he will again indulge in similar activities prejudicial to the maintenance of public peace and public order in future. However, in the same nature of offences in some similar cases, accused was released on bail through appropriate court in various instances i.e., in Maraimalai Nagar Police Station Cr.No.460/2015 u/w 294(b), 395,397,307,506(ii) IPC accused Thiru Sugumar S/o. Marimuthu @ Sekar was released on bail thro' High



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Court, Madras in Crl.O.P.No.14019/2015 on 11.06.2015. If he comes out on bail, he will indulge in such further activities in future and therefore there is a compelling necessity to pass an order of detention with a view to prevent him from indulging in such prejudicial activities in future....."

5. From a perusal of the detention order, it is seen that the detaining authority has taken into consideration a similar case registered in Maraimalai Nagar Police Station Cr.No.460/2015 u/w 294(b), 395,397,307,506(ii) IPC, bail was granted by this Court in Crl.O.P.No.14019/2015 on 11.06.2015 and therefore, there is a real possibility of the detenu coming out on bail in the ground case in Crime No.108/2019 and indulge in such activities prejudicial to the maintenance of public order. The similar case relied on by the authority was registered for the offences under Sections 294(b), 395,397,307,506(ii) IPC whereas the offences involved in the ground case are under Sections 147, 148, 341, 294(b), 397, 307, 324, 506(ii) IPC. Therefore, there is non-application of mind on the part of the detaining authority in not considering the similar case for arriving at subjective satisfaction. Hence the impugned order of detention is liable to be set aside.

6. In the result, the Habeas Corpus Petition is allowed and the order of detention in Memo No.26/BCDFGISSSV/2019, dated 04.04.2019 passed by the second respondent is set aside. The detenu, Vinoth Kumar @ Quick Vinoth, Son of Pownraj, male, aged about 39 years, is directed to be released forthwith unless his detention is required in connection with any other case.

Sd/-
Assistant Registrar (CS-VI)

//True copy//

Sub Assistant Registrar

raa/ssm

To

1. The Secretary to Government,
Prohibition and Excise Department,
Fort St. George, Chennai - 600 009

2. District Collector and District Magistrate,
Kancheepuram District, Kancheepuram.



3. The Superintendent,
Central Prison, Puzhal, Chennai - 66.

4. The Joint Secretary to Government,
Public (Law & Order),
Fort St. George, Chennai.

5. The Public Prosecutor,
High Court, Madras.

H.C.P. No.788 of 2019

RV(CO)
GMY(04/09/2019)